

CARMELITA M. HOLLAND

IBLA 84-338 Decided June 13, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring seven mining claims abandoned and void. OR MC 22329, 22330, 23865, 24285, 31021, 35891, 38837.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of FLPMA, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

There is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. When an appellant asserts the affidavit of annual assessment work was mailed to BLM, but lost, appellant must submit evidence that it was received by BLM in order to overcome this presumption.

APPEARANCES: Carmelita Holland, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Carmelita Holland appeals from a decision, dated January 20, 1984, of the Oregon State Office, Bureau of Land Management (BLM), which declared the Lime Cliff Nos. 1, 4, 5, the Parkettle I, the Parkettle II, the Preston,

and the Sullivan Trek mining claims abandoned and void by operation of law. OR MC 24285, 22329, 22330, 23865, 31021, 35891, and 38837. 1/

The decision which is the subject of this appeal states that the 1983 affidavit of assessment work performed (proof of labor) was rejected for recordation and returned because an examination of the claim filings showed that no affidavit of assessment work or notice of intention to hold had been received by BLM on or before December 30, 1982. As regards the Sullivan Trek mining claim OR MC 38837, no affidavits of assessment work performed were filed with BLM on or before December 30, 1981, or December 30, 1982. 2

In the statement of reasons appellant notes, as follows:

The mines are mining claims my father George Griffin located during the 1950's and he spent his life working them. We have held them in peaceable possession and developed them all these years. My father collected about ten thousand dollars out of the operation of these mining claims, and mining activity. The work was done on these claims with power and hand tools including work tunnelling, and developing trails and roads. Much road work was done with caterpillars. After Dad died in 1978 us kids filed on his filings to keep possession of the mines. Attempts have been made by outsiders to try to file on some of the property and this is why we wish to save the claims by appeal rather than re-file. We have faithfully kept up our corners and lines with signs and ribbons and done our assessment work. Through our Mining Association newspaper I was informed in 1982 that we would receive copies of our filing from the BLM and did wonder why I heard nothing. I received postcards in both 1982 and 1983 saying claims were not reported which I answered but there was no reply.

1/ The proofs of labor filed with the appeal contain two categories within which names are to be added. The first is "Performed at request of" and the second is "Performed by." The names included in those categories are as follows: Ed and Carmelita M. Holland, Thomas A. Griffin, Laura and Gail Perrigan, Brian K. Holland, June and Don Peterson, Gail and Glenn Griffin, D. Brainard, and Dave Dennis. The case file contains a document, dated Sept. 28, 1982, which notes the Lime Cliff Nos. 4 and 5 mining claims had been sold in 1982 by Carmelita Holland, Thomas Griffin, and Laura W. Perrigan to Brian Holland, June Peterson, Gail Perrigan, and Glenn Griffin. Under the regulations, 43 CFR 1.3, Carmelita Holland is ineligible to represent Brian Holland, June Peterson, Gail Perrigan, and Glenn Griffin because she has not established facts, e.g., that they are members of her family, etc., which would enable her to represent them.

2/ The decision notes the abandoned claims may be relocated for locatable minerals subject to valid existing rights and to any intervening closure of the lands to mining location. Instruments for the new claims should be recorded under state law and then must be filed with BLM within 90 days after the date of relocation of the new claims under the requirements of 43 CFR 3833.1-2.

[1] The Board has consistently held, in conformity to the statute and applicable regulations (43 CFR Subpart 3883), that the owner of an unpatented mining claim located on public land before October 21, 1976, must file a notice of intention to hold or affidavit of assessment work performed on the claim with the proper BLM office by October 22, 1979, and on or before December 30 in each subsequent calendar year. Lanny Ray Southard, 86 IBLA 239 (1985).

A recent decision, United States v. Locke, 105 S. Ct. 1785 (1985), interpreted the relevant statute, and the Supreme Court stated at 1795-96:

Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by § 314(c); the failure to file on time, in and of itself, causes a claim to be lost. See Western Mining Council v. Watt, 643 F.2d 619, 628 (CA9 1981).

[2] In various letters sent to the Oregon State Office and this Board, appellant states the proof of labor for 1982 "appears to have been lost after I mailed it in September of 1982"; "I sent a copy of this proof of labor to the Oregon State Office in Portland the day after I filed the proof [with the county]"; "[a]s you say it is unlikely the copy of our proof of labor for 1982 was lost in your office we can only assume it was lost in the mails"; and "there were two sheets in the envelope sent in 1982 and I suspect the Proof probably was not noticed and was discarded with the envelope."

We note there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). On the other hand, we have recognized the existence of another presumption that mail properly addressed, stamped, and deposited in an appropriate receptacle is duly delivered. See generally Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, we have traditionally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). This choice has been predicated on considerations of public policy and supported by burden-of-proof analysis. Bernard S. Storper, 60 IBLA 67, 70 (1981), aff'd, Storper v. Watt, No. 82-0449 (D.D.C. Jan. 20, 1983).

With this presumption in mind, an examination of the record does not support the allegations made by appellant. The proof of labor submitted by appellant on appeal lists only three claims: Preston, OR MC 35891; Parkettle I, OR MC 23865; and Parkettle II, OR MC 31021. The Lime Cliff claims are not shown on the face of the document, and appellant admits abandonment of the Sullivan Trek mining claims in a letter to BLM dated February 21, 1984. The proof of labor was recorded with the county clerk on September 2, 1982. Therefore, if sent on the date stated by appellant, it would have been mailed on September 3, 1982. The document referred to as having been enclosed with the proof of labor (a conveyance of four claims) was dated September 28, 1982, and received on October 1, 1982. The two documents could not have been mailed together on the date stated. Further, if mailed, and lost in the mail, that fact would not excuse appellant's

failure to meet the cited regulations. Rachel G. Conover, 75 IBLA 323 (1983); Hughes Minerals, Inc., 74 IBLA 217 (1983); Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must bear the consequences of the loss of his filings, as filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute delivery, and thus does not constitute filing. 43 CFR 1821.2-2(f). See Rachel G. Conover, *supra* at 324, and cases cited therein.

Therefore, when an appellant asserts that a document was sent to BLM, and BLM has no record of receiving it, the presumption of regularity militates against a finding that it was, in fact, received by BLM and subsequently lost through mishandling without any record or recollection of it by BLM personnel. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). Appellant has not submitted evidence which would overcome this presumption.

Since filings were not made, the statute clearly compels the conclusion that the instant claims are abandoned and void. 43 U.S.C. § 1744(c) (1982). United States v. Locke, *supra*; Lanny Ray Southard, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

